

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ATARI, INC., a Delaware  
corporation, and MIDWAY MFG.  
CO., an Illinois corporation,

Plaintiffs,

vs.

No. 81 C 6434

NORTH AMERICAN PHILLIPS CONSUMER  
ELECTRONICS CORP., a Tennessee  
corporation, and PARK TELEVISION  
d/b/a PARK MAGNAVOX HOME  
ENTERTAINMENT CENTER, an  
Illinois partnership,

Defendants.

TRANSCRIPT OF PROCEEDINGS had in the above-entitled  
cause before the HONORABLE GEORGE N. LEIGHTON, one of the  
Judges of said Court, in his courtroom in the United States  
District Courthouse, Chicago, Illinois, on Wednesday,  
December 2, 1981.

PRESENT:

MR. DANIEL VITTUM,  
MR. MARTIN L. LAGOD,  
MR. ROBERT KRUPKA,

for the Plaintiff Atari, Inc.;

MR. ERIC COHEN,

for the Plaintiff Midway Manufacturing Co.;

MR. THEODORE W. ANDERSON,  
MR. JAMES T. WILLIAMS,  
MR. GREGORY B. BEGGS,

for the defendants.

MR. VITTUM: Good morning, your Honor.

THE COURT: Good morning.

MR. ANDERSON: Good morning.

THE COURT: Gentlemen, I am entering a minute order.

Mr. Grice, will you hand that -- here is the original -- will you hand copies of this to counsel?

THE CLERK: Very well.

THE COURT: In this minute order, I am denying the motion for a preliminary injunction for the reason that I have concluded, based on the draft of the findings of fact and conclusions of law that the plaintiffs will not succeed in this case in showing a likelihood of success on the merits.

These games, in my judgment, after reviewing the evidence, are so different that the plaintiffs will not show infringement of the copyright, nor will the plaintiffs succeed in proving the claims alleged on the other theory of the case.

Now because I expect that an interlocutory appeal will be sought, I have entered this minute order today and provided that the time for the interlocutory appeal will not begin to run until I have actually filed the memorandum. It is being typed now and depending upon what progress I make with it late in the morning, it will be filed as promptly as I possibly can. It is somewhat an extensive piece of work

and, therefore, the press of other cases will prevent my filing it immediately this morning.

You may stay in touch with Mr. Grice. He will tell you when that memorandum will be filed.

MR. VITTUM: Your Honor, I believe the requirements of Federal Appellate Rule 8 require that in the case of an application for an injunction pending appeal at the Court of Appeals level, I am required first to request such relief from the trial court so I would, at this time, request that the Court enter an injunction against infringement pending the interlocutory appeal in accordance with the provisions of the Federal Appellate Rule 8.

THE COURT: Mr. Anderson?

MR. ANDERSON: Your Honor, I think that would be virtually as damaging as the relief they have already sought. There is no showing by the plaintiffs at all of any imminent irreparable injury and, therefore, I would request that that relief be denied.

THE COURT: I will enter another separate order denying preliminary injunction or injunctive relief pending appeal and I will state the reasons as briefly as I can in that minute order so that you may apply to the Court of Appeals for it, for that relief, as you desire but I will enter that order sometime late this morning.

MR. VITTUM: Thank you, your Honor.

MR. ANDERSON: Thank you, your Honor.

THE COURT: All right. Fine. Thank you.

(Which were all the proceedings had  
in said cause on said dates.)

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EASTERN DIVISION

ATARI, INC., and MIDWAY  
MANUFACTURING COMPANY,

Plaintiffs,

vs.

No. 81 C 6434

NORTH AMERICAN PHILLIPS  
CONSUMER ELECTRONIC and  
PARKER TELEVISION,

Defendants.

C E R T I F I C A T E

I hereby certify that the foregoing transcript, consisting of Pages 1 to 346, inclusive, is a full, true and accurate transcript of my shorthand notes taken in the above-entitled cause before the Honorable GEORGE N. LEIGHTON, on November 25, 1981, November 30, 1981 and December 2, 1981.

*Kay Abbott*

Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division.